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Washington Supreme Court No. 85989-2
Court of Appeals No. 39546-1-II

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SUPREME COURT OF THE STATE OF WASHINGTON

CLARK COUNTY WASHINGTON, CITY OF LA CENTER, GM CAMAS
LLC, MCDONALD LIVING TRUST, and RENAISSANCE HOMES,

Petitioners,

v.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
REVIEW BOARD, JOHN KARPINSKI, CLARK COUNTY NATURAL
RESOURCES COUNCIL, and FUTUREWISE,

Respondents.

PETITIONER STERLING SAVINGS BANK'S
SUPPLEMENTAL BRIEF

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I. INTRODUCTION

The Court of Appeals' Published Opinion below ("Opinion") nullifying the City of Camas's annexation of a portion of parcel CA-1 ("Camas Property") owned by petitioner Sterling Savings Bank ("Petitioner")¹ should be reversed because the Court of Appeals lacked jurisdiction to do so.

First, the Opinion should be reversed as to the Camas Property because the Court of Appeals lacked personal jurisdiction over the City of Camas. The City of Camas was an indispensable party to any decree nullifying the City of Camas's annexation of the Camas Property. Yet the City of Camas was never made a party to any of the proceedings below, including before the Growth Board, Superior Court, and the Court of Appeals. As none of the adjudicatory bodies, including the Court of Appeals, ever acquired personal jurisdiction over the City of Camas, the Court of Appeals lacked jurisdiction to *sua sponte* nullify the City of Camas's annexation of the Camas Property.

Second, the Opinion should be reversed as to the Camas Property

¹ As a result of Petitioner's foreclosure of the Camas Property in January 2011, Petitioner is the successor in interest to GM Camas LLC, the respondent in the Published Opinion below. On May 12, 2011, the Court of Appeals entered an Order substituting Sterling Savings Bank in the place and stead of GM Camas LLC.

because the Growth Board, and by extension the Court of Appeals, lacked subject matter jurisdiction to nullify the City of Camas's annexation of the Camas Property.

Third, the Opinion should be reversed as to the Camas Property because the Court of Appeals lacked appellate jurisdiction. A case or controversy, and a Notice of Appeal appealing the lower court's decision on the case or controversy, are necessary prerequisites to appellate jurisdiction. Here, there was no case or controversy and no Notice of Appeal appealing the nonexistent controversy because (a) no party challenged the annexation of the Camas Property, (b) the parties had settled their dispute concerning the Camas Property via a Stipulated Order entered by the Superior Court, (c) no appeal was taken in connection with that Stipulated Order, and (d) the Notice of Appeal filed by the parties below appealed a different Order that did not embrace the annexation of the Camas Property.

As demonstrated below, the Court of Appeals lacked jurisdiction to *sua sponte* nullify the City of Camas's annexation of the Camas Property that no one challenged and no one appealed.

II. STATEMENT OF THE CASE

In 2004, Clark County ("County") designated 19 parcels, including the parcel identified as CA-1, as agricultural lands of long-term

commercial significance ("ALLTCS"). *Clark County Wash. v. West. Wash. Growth Mgmt. Hearings Rev. Bd.*, 161 Wn. App. 204, 213, 254 P.3d 862 (2011) (also referred to as the "Opinion"). On September 25, 2007, the County passed Ordinance No. 2007-09-13 ("Ordinance"), which de-designated the 19 parcels from ALLTCS status and added the 19 parcels to its urban growth areas ("UGA"). Opinion, p. 217. CA-1 was later incorporated into the UGA of the City of Camas.

On November 16, 2007, John Karpinski, the Clark County National Resources Council, and Futurewise (collectively, the "Karpinski Parties") petitioned the Growth Board for a review of the County's decisions to de-designate the 19 parcels and incorporate them into their respective cities' UGAs. Opinion, p. 217.

On April 8, 2008, the Growth Board held a one-day hearing to consider the Karpinski Parties' claims. Before the Growth Board entered its final order on the Karpinski Parties' petition, the City of Camas annexed a portion of CA-1 (*i.e.*, the Camas Property) in compliance with state law, along with other land north of the city limits, by passing Ordinance No. 2512 on or about April 21, 2008. Opinion, p. 218. The annexation ("Annexation") became effective on May 11, 2008.

None of the parties moved to stay enforcement of the County's Ordinance pending the appeal to the Growth Board or sought an injunction

of the Annexation of the Camas Property. *See* Consolidated Response to Order Relating to Jurisdiction, dated June 10, 2010, pp. 2-3 (hereinafter "Consolidated Response," attached hereto as Appendix A). Moreover, none of the parties filed any petition for review challenging the City of Camas's Annexation of the Camas Property as required under Washington statute. *Id.*

On May 14, 2008, three days after the Annexation became effective, the Growth Board entered its final order, which was subsequently amended on June 3, 2008. Opinion, p. 219. In its final order, the Growth Board affirmed the County's decision on eight (8) of the challenged parcels, but found the County's actions noncompliant with the GMA and invalidated the Ordinance with respect to the other 11 challenged parcels, including CA-1. *Id.*

On June 11, 2008, the County petitioned the Clark County Superior Court ("Superior Court") to review the Growth Board's findings of noncompliance with respect to, among other parcels, CA-1. *Id.*

On February 26, 2009, the Karpinski Parties and GM Camas LLC, the then-owner of the Camas Property, stipulated that "1) GM Camas, LLC is the prevailing party in this action by virtue of subsequent annexation of the GM Camas property to the City of Camas and 2) the [Growth Board]'s Final Decision and Order, with respect to GM Camas,

LLC, is hereby reversed.” Clerk’s Papers (“CP”) 212-213. That same day, the Superior Court entered the parties’ stipulation as an Order, reversing the Growth Board’s decision of noncompliance as to the Camas Property. *Id.* No one appealed the stipulated Order (“Stipulated Order”).

On June 12, 2009, the Superior Court entered a separate Order reversing the Growth Board’s decision as to parcels CB, LB-1, LB-2, LE, VA, VA-2, and WB, and affirming the Growth Board’s decision as to parcels BC and VB. CP 244-245. The Karpinski Parties appealed the June 12, 2009 Order to the Court of Appeals of the State of Washington, Division II (the “Court of Appeals”), but not the February 26, 2009 Stipulated Order. CP 247-254. Indeed, given that the Karpinski Parties entered into the Stipulated Order agreeing to reverse the Growth Board’s decision as to the Camas Property, the Karpinski Parties had no reason to appeal or otherwise challenge the Stipulated Order to the Court of Appeals.

After the briefing was completed by the parties, the Court of Appeals issued an Order Relating to Jurisdiction on June 1, 2010 (“Order Relating to Jurisdiction”). Even though none of the parties appealed or otherwise assigned any error to the Stipulated Order concerning the Camas Property or the Annexation, the Court of Appeals asked:

What authority do the cities of Camas and Ridgefield claim support their purported annexations during pending appeal of parts of parcels CA-1 and RB-2, and the entirety of parcel CB?

Order Relating to Jurisdiction issued June 1, 2010, p. 2.

All of the parties, including the Karpinski Parties, responded by signing and filing a Consolidated Response stating that:

A determination that a comprehensive plan amendment is invalid is prospective in effect. RCW 36.70A.302(2). Unless and until the Growth Management Hearings Board (GMBH) determines that a plan amendment is invalid, the amendment is therefore both presumed valid, RCW 36.70A.320, and valid in effect. RCW 36.70A.302(2). In the absence of a stay of the county's decision, the plan amendment remains effectively valid throughout an appeal of its provisions, until receipt of a GMBH order containing a determination that the amendment is invalid. *Id.* See also, RCW 36.70A.300(4).

The **annexations of Area CB and portions of Areas CA-1 and RB-2 were effective** before the GMHB issued its Final Decision and Order (FDO) on May 17, 2008. No person either sought a stay of the county's decision placing these areas within urban growth boundaries, or appealed the annexations themselves, or sought by any other means to prevent or overturn the annexations. **No statute or rule authorizes an appellate board or court to overturn a lawfully accomplished, effective annexation that occurred prior to a GMHB ruling on the property.**

Consolidated Response, p. 2-3 (emphasis added).

The City of Camas also sent an E-mail to the Court of Appeals objecting to any review of the Annexation and informing the Court of

Appeals that (a) the City of Camas was not a party to the appeal to the Growth Board, (b) it was a necessary and indispensable party to any proceedings to set aside the Annexation, (c) the Karpinski Parties had taken no action to challenge the Annexation, which had occurred years earlier, and (d) the City of Camas had been already collecting taxes and providing municipal services to the annexed area during those years. *See* Appendix B to Petitioner Sterling Savings Bank's Petition for Review.

Despite the fact that no one had challenged the Annexation and the Court of Appeals lacked personal jurisdiction over the City of Camas, the Court of Appeals raised the validity of the annexation *sua sponte*, holding that because "a County's challenged land designation determination is not final, city governments cannot rely on county planning decisions that are the subject of a pending appeal and any such actions do not divest the reviewing body of jurisdiction." Opinion, p. 221. As discussed below, the Court of Appeals erred.

III. ARGUMENT

A. The Court of Appeals Had No Jurisdiction To Invalidate The Annexation By The City Of Camas Of The Camas Property Because No Tribunal Ever Acquired Personal Jurisdiction Over the City of Camas.

Invalidating the Annexation and redefining the boundaries of the City of Camas directly affects the rights, authority and territory of the City

of Camas. As a result, the City of Camas was a necessary and indispensable party to any proceeding concerning the Annexation. *Metro Mortg. and Sec. Co., Inc. v. Cochran*, 138 Wn. App. 267, 274, 156 P.3d 930 (2007) (“An indispensable party is one without whose presence and participation a complete determination of the case may not be made.”).

The Court of Appeals never acquired personal jurisdiction over the City of Camas because the City of Camas was never a party to any of the proceedings or appeals before the Growth Board, the Superior Court, or the Court of Appeals. *In re Estate of Kordon*, 157 Wn.2d 206, 210, 137 P.3d 16 (2006) (“Proper service of process ‘is essential to invoke personal jurisdiction over a party.’”); *Prof'l Marine Co. v. Those Certain Underwriters at Lloyd's*, 118 Wn. App. 694, 706, 77 P.3d 658 (2003) (“Proper service of the summons and complaint is essential to invoke personal jurisdiction over a party.”).

Even the Opinion itself recognized that the City of Camas was an indispensable party over which the Court of Appeals had no jurisdiction:

Finally, in its amicus curiae brief,² Camas argues that it is a necessary party to the consideration of any

² By “amicus curiae brief,” the Court of Appeals is referring to an E-mail that the City of Camas sent in response to the June 1, 2010 Order Relating to Jurisdiction Issued by the Court of Appeals asking, “What authority do the Cities of Camas and Ridgefield claim support their purported annexations during a pending appeal of parts of parcels CA-1 and RB-2, and the entirety of parcel CB?” The term “amicus curiae brief” is a misnomer because the City of Camas never filed a motion to file an amicus brief or filed

questions involving the validity of the annexations and that it was never properly joined to these proceedings. CR 19. A necessary party is one that claims an interest relating to the subject of the action and whose absence from the case may impair or impede his ability to protect that interest. CR 19(a)(2). We are not insensitive to the cities' concerns and limit our holding only to the Growth Board's authority to enter findings regarding the validity of the County's decisions relating to these parcels.

Opinion, p. 226.

The Court of Appeals sought to cure its jurisdictional defect over the City of Camas by announcing that it was "limiting its holding" to setting aside the de-designation of the Camas Property from the ALLTCS status and not the City of Camas's Annexation of the Camas Property. Respectfully, the Court of Appeals' reasoning is erroneous because the Court of Appeals acknowledged in the Opinion that, "Under RCW 35.13.005, '[n]o city or town located in a county in which urban growth areas have been designated under RCW 36.70A.110 **may annex territory beyond an urban growth area.**'" Opinion, p. 221 (emphasis added). Thus, to set aside the de-designation of the Camas Property from the ALLTCS status is to set aside the Annexation of the Camas Property by the City of Camas, a decision that has a direct impact on the City of Camas over which no tribunal (including the Court of Appeals) had ever

any other pleading with the Court of Appeals. An E-mail responding to an Order issued

acquired personal jurisdiction.

Because the Court of Appeals lacked personal jurisdiction over the City of Camas, the Court of Appeals exceeded its jurisdiction by *sua sponte* invalidating the City of Camas's Annexation of the Camas Property.

B. The Court of Appeals Lacked Subject Matter Jurisdiction As To The Camas Property.

The Court of Appeals reasoned that because the Growth Board had subject matter jurisdiction over the Camas Property that the Court of Appeals also had subject matter jurisdiction to nullify the Annexation of the Camas Property. The Court of Appeals erred because the Growth Board lacked subject matter jurisdiction to determine the validity of the Annexation of the Camas Property.

The matters subject to review by the Growth Board under RCW 36.70A.280 are limited to petitions alleging noncompliance with the Growth Management Act. RCW 36.70A.280, entitled "Matters Subject to Review," provides:

- (1) The growth management hearings board shall hear and determine only those petitions alleging either:
 - (a) That ... a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter ...;

by the Court of Appeals is not an "amicus curiae brief." See *generally* RAP 10.6.

(b) That the twenty-year growth management planning population projections adopted by the office ... should be adjusted;

(c) That the approval of a work plan ... is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable ...; or

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous.

RCW 36.70A.280 (emphasis added); *see also Fallgatter v. City of Sultan*, 2006 WL 1980184 *4 (Wash. Cent. Puget. Sd. Growth Mgmt. Hrgs. Bd., June 29, 2006) (“Although the Petitioner couches the issues in violations of RCW 36.70A, the actions that the City undertook were clearly an annexation pursuant to RCW 35A.14.300, and the Board does not have jurisdiction to review the actions taken by a city council acting pursuant to this section of the RCW.”).

Thus, the Growth Board, and by extension the Court of Appeals, lacked subject matter jurisdiction to nullify the City of Camas’s Annexation of the Camas Property.

C. The Court of Appeals Lacked Appellate Jurisdiction As To The Camas Property.

1. There Is No Appellate Jurisdiction Where There Is No Case Or Controversy.

Before a court may exercise judicial power, there must be a

justiciable case or controversy. *Washington Educ. Ass'n v. Washington State Pub. Disclosure Comm'n*, 150 Wn.2d 612, 613, 80 P.3d 608 (2003) ("We steadfastly adhere to 'the virtually universal rule' that there must be a justiciable controversy before the jurisdiction of a court may be invoked."); *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (adhering to "the virtually universal rule that, before the jurisdiction of a court may be invoked under the act, there must be a justiciable controversy"); *Villas at Harbour Pointe Owners Ass'n ex rel. Constr. Assocs., Inc. v. Mut. of Enumclaw Ins. Co.*, 137 Wn. App. 751, 760, 154 P.3d 950 (2007) ("For a court to exercise judicial power, there must be a justiciable case or controversy.") (citing U.S. Const. art. III, § 2, cl. 1). This Court has defined a justiciable case and controversy as follows:

(1) an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

To-Ro Trade Shows, 144 Wn.2d at 411.

If a court exercises judicial power where there is no case or controversy, the court is rendering an advisory opinion. The existence of a

justifiable controversy ensures “that the court does not step into the prohibit area of advisory opinions.” *Wash. Educ. Ass’n*, 150 Wn.2d at 623 (quotation omitted); *see also Cena v. Dep’t of Labor & Indus.*, 121 Wn. App. 915, 924, 91 P.3d 903 (2004) (“This court avoids deciding issues unnecessary to the resolution of a case, and also avoids rendering advisory opinions where there is no real justiciable controversy.”).

Thus, “[t]his court has repeatedly dismissed appeals when it has transpired that the controversy between the parties has ceased.” *In re Brown’s Guardianship*, 6 Wn.2d 215, 236, 107 P.2d 1104 (1940); *Pac. Sav. & Loan Ass’n v. Smith*, 121 Wash. 595, 597, 209 P. 1086 (1922) (“We have always held that we will not decide a case where the controversy between the contending parties has ceased, and when there would be nothing on which our judgment could operate.”).

There was no case or controversy before the Court of Appeals as to the Camas Property for two reasons. First, there was no dispute between any of the parties concerning the validity of the Annexation. To challenge an annexation, a party must seek judicial review under RCW 35A.14.210 or a writ of review under RCW 7.16.040, *et. seq.* At no point in time did the Karpinski Parties or any other parties seek to challenge the Annexation under RCW 35A.14.210 or RCW 7.16.040. In fact, the Karpinski Parties admitted that there was no case or controversy relating to the annexation

of the Camas Property by filing a response to the Jurisdiction Order stating that:

The annexations of Area CB and portions of Areas CA-1 and RB-2 were effective before the GMHB issued its Final Decision and Order (FDO) on May 17, 2008. No person either sought a stay of the county's decision placing these areas within urban growth boundaries, or appealed the annexations themselves, or sought by any other means to prevent or overturn the annexations. No statute or rule authorizes an appellate board or court to overturn a lawfully accomplished, effective annexation that occurred prior to a GMHB ruling on the property.

Consolidated Response, p. 2-3 (emphasis added).

Second, there was no dispute between any of the parties concerning the de-designation of the Camas Property from the ALLTCS status because the parties had settled their dispute via the Stipulated Order prior to the appeal. Specifically, the Karpinski Parties and GM Camas, LLC (Petitioner's predecessor in interest) settled their dispute by entering into the Stipulated Order providing that:

1) GM Camas, LLC is the prevailing party in this action by virtue of subsequent annexation of the GM Camas property to the City of Camas and 2) the [Growth Board]'s Final Decision and Order, with respect to GM Camas, LLC, is hereby reversed.

CP 212-213; *see also* CP 217 (“[T]he challenge regarding CA-1 area was resolved by agreed Entry of the Court prior to oral argument (between Futurewise et al and GM Camas LLC.”). The Stipulated Order reversing

the Growth Board's decision as to the Camas Property was subsequently entered by the Superior Court and was never appealed.

Indeed, the Court of Appeals recognized that it was providing an advisory opinion where "there is no longer any error presented for our review or any remedy for us to provide." Opinion, p. 227. Thus, footnote 17 of the Opinion states that:

In addition, to the extent that the ruling appealed is no longer the final ruling (in effect), **an opinion from this court could turn out to be an advisory opinion** in violation of *To-Bo Trade Shows v. Collins*, 144 Wn.2d 403, 416, 27 P.3d 1149 (2001), *cert. denied*, 535 U.S. 931 (2002), and *Commonwealth Ins. Co. of Am. v. Grays Harbor County*, 120 Wn. App. 232, 245, 84 P.3d 304 (2004) (citing *Wash. Beauty Coll., Inc. v. Huse*, 195 Wash. 160, 164, 80 P.2d 403 (1938)).

(Emphasis added.)

In sum, the Court of Appeals had no appellate jurisdiction over the Camas Property because there was no case or controversy before the Court of Appeals to decide.

2. There Is No Appellate Jurisdiction Where There Is No Notice Of Appeal.

On February 26, 2009, the Superior Court entered the Stipulated Order reversing the Growth Board's decision of noncompliance for the Camas Property. Under Rule 5.2 of the Washington Rules of Appellate Procedure, a Notice of Appeal must be filed within 30 days.

The Notice of Appeal in this case was filed by the Karpinski Parties on July 6, 2009 as to the June 12, 2009 Order (not the Stipulated Order), over four months after the Superior Court entered the Stipulated Order. CP 247-254. The Notice of Appeal did not challenge or appeal the Stipulated Order. Indeed, the Karpinski Parties acknowledge this fact in their Answer to Sterling's Petition for Review before this Court, stating:

The stipulation was entered by the Clark County Superior Court. Having so stipulated, Karpinski perceived that stipulation to have become the law of the case. Thus Karpinski did not perceive this area to be encompassed in their petition of appeal.

Answer to Petitions for Review By Karpinski, CCNRC, and Futurewise Respondents, p. 4.

The Court of Appeals had no jurisdiction to make any determinations concerning the Camas Property because a timely notice of appeal is jurisdictional in nature, and the failure to file a timely notice of appeal precludes appellate jurisdiction to hear the appeal. *Singleton v. Naegeli Reporting Corp.*, 142 Wn. App. 598, 603, 175 P.3d 594, 596 (2008) ("A necessary prerequisite to appellate jurisdiction is the timely filing of the notice of appeal"); *Kelly v. Schorzman*, 3 Wn. App. 908, 911, 478 P.2d 769 (1970) ("Since the notice of appeal was not timely filed after entry of the order granting a new trial, this court is without jurisdiction to

rule upon the trial court's determination.”).³

Nevertheless, the Opinion reasons that because the Growth Board had jurisdiction over the Camas Property that the Court of Appeals also had jurisdiction over the Camas Property. Respectfully, the Court of Appeals is conflating subject matter jurisdiction with appellate jurisdiction. The latter only exists if there is a case or controversy that is appealed to the Court of Appeals.

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the

³ Here, the Court of Appeals also recognized that Notice of Appeal is essential to appellate jurisdiction because page 228 of the Opinion states that:

In our June 1, 2010 order relating to jurisdiction, we also asked the parties to clarify whether the notice of appeal included the propriety of the Growth Board's decision approving the County's dedesignation of eight parcels (i.e., parcels BB, LA, LC, RB-1, RC, VC, VE, and WA) from ALLTCS status. The Growth Board ruled that the County's decisions on these eight parcels were compliant with the GMA and Karpinski did not cross-appeal these decisions to the superior court. Although the Growth Board addressed all 19 parcels in a single decision, the parties agree that the notice of appeal did not include any issues related to the Growth Board's decisions affirming the eight aforementioned parcels. Accordingly, we do not address any issues related to parcels BB, LA, LC, RB-1, RC, VC, VE, and WA.

Opinion, p. 228 (emphasis added). Given that the Court of Appeals recognized that it should not “address any issues” related to parcels BB, LA, LC, RB-1, RC, VC, VE, and WA because “the parties agree that the notice of appeal did not include any issues related to” those eight parcels, the Court of Appeals also should not have addressed any issues related to the Camas Property because the parties agreed to the reversal of the Growth

Court reverse the Court of Appeals' Opinion as to the Camas Property.

RESPECTFULLY SUBMITTED this 19th day of December,
2011.

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Board's decision as to the Camas Property.

CERTIFICATE OF SERVICE

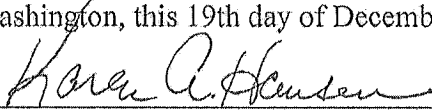
The undersigned hereby certifies a true and complete copy of the foregoing **PETITIONER STERLING SAVINGS BANK'S SUPPLEMENTAL BRIEF** was caused to be served by email and first class U.S. Mail on December 19, 2011, on counsel of record at the addresses shown below.

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, this 19th day of December, 2011.



Karen Hansen

WEST\224737370.6

RECEIVED
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STATE OF WASHINGTON
Dec 19, 2011, 3:38 pm
BY RONALD R. CARPENTER
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APPENDIX A

COPY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

CLARK COUNTY, CITY OF LaCENTER, GM
CAMAS LLC, MacDONALD LIVING TRUST
and RENAISSANCE HOMES,

Respondents,

and

BIRCHWOOD FARMS, LLC,

Intervenor,

v.

WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD,

Respondents on Review;

JOHN KARPINSKI, CLARK COUNTY
NATURAL RESOURCES COUNCIL and
FUTUREWISE,

Appellants.

Court of Appeals
Case No. 39546-1-II

Clark County Superior Court Consolidated
Case No. 08-2-03625-5

Consolidated from Case Nos.:

08-2-03625-5

08-2-03649-2

08-2-03657-3

08-2-03659-0

08-2-03680-8

WWGMHB Case No. 07-2-0027c

CONSOLIDATED RESPONSE TO
ORDER RELATING TO
JURISDICTION

COMES NOW, Clark County, by and through its attorney, Christine M. Cook, Deputy
Prosecuting Attorney; City of La Center, by and through its attorney, Daniel H. Kearns; John
Karpinski, Clark County Natural Resources Council (CCNRC) and Futurewise, by and through
their attorney, Robert Beattey; GM Camas LLC and MacDonald Living Trust, by and through

CONSOLIDATED RESPONSE TO ORDER
RELATING TO JURISDICTION - 1 of 6

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1 their attorney, Randall Printz; and Renaissance Homes and Birchwood Farms, LLC, by and
2 through their attorney, Meridee Pabst, and stipulate to consolidation of responses to the Order
3 Relating to Jurisdiction as follows:
4

5 **Question 1:** Property that lies outside an Urban Growth Area is not subject to
6 annexation. RCW 31.13.005. The legality of the County's dedesignation of agricultural lands of
7 long term commercial significance and their incorporation into an Urban Growth Area are the
8 subjects of this appeal. What authority do the cities of Camas and Ridgefield claim support their
9 purported annexations during appealing appeal of parts of parcels CA-1 and RB-2, and the
10 entirety of parcel CB?
11

12 **ANSWER:** A determination that a comprehensive plan amendment is invalid is
13 prospective in effect. RCW 36.70A.302(2). Unless and until the Growth Management Hearings
14 Board (GMHB) determines that a plan amendment is invalid, the amendment is therefore both
15 presumed valid, RCW 36.70A.320, and valid in effect. RCW 36.70A.302(2). In the absence of
16 a stay of the county's decision, the plan amendment remains effectively valid throughout an
17 appeal of its provisions, until receipt of a GMHB order containing a determination that the
18 amendment is invalid. *Id.* See also, RCW 36.70A.300(4).
19
20

21 The annexations of Area CB¹ and portions of Arcas CA-1² and RB-2³ were effective
22 before the GMHB issued its Final Decision and Order (FDO) on May 17, 2008. No person
23 either sought a stay of the county's decision placing these areas within urban growth boundaries,
24 or appealed the annexations themselves, or sought by any other means to prevent or overturn the
25
26

27 ¹ Effective April 26, 2008.

28 ² Effective April 26, 2008.

29 ³ Effective April 20, 2008.

1 annexations. No statute or rule authorizes an appellate board or court to overturn a lawfully
2 accomplished, effective annexation that occurred prior to a GMHB ruling on the property.
3

4 Beyond these points of agreement, the parties may wish to present their answers to the
5 Court's question in supplemental briefing.

6 **Question 2:** Following the filing of the notice of appeal to this court, the County and the
7 GMHB purported to redesignate property via county ordinance, issue rulings, and enter orders.
8 *See, e.g.,* AR 3328-3350, 3355-3361. What authority do the County and the GMHB have to act
9 while the Court of Appeals has jurisdiction over the case?
10

11 ANSWER: Chapter 36.70A RCW (GMA) requires that the GMHB conduct proceedings
12 to ensure that a local government has complied with the GMHB's final decision and order.
13 RCW 36.70A.300(3); RCW 36.70A.302(5)-(7); RCW 36.70A.330. Even if an appeal of the
14 GMHB's order is pending, the GMHB may require a local government to file with the GMHB a
15 report on its progress toward achieving compliance with an FDO. RCW 36.70A.300(3)(b).
16 After further proceedings before the GMHB, the board is authorized and required by statute to
17 issue an order acknowledging that the local government is in compliance, or extending its order
18 of noncompliance and/or invalidity. RCW 36.70A.330. In this case, Clark County has taken
19 action to achieve compliance with the parts of the FDO that the Superior Court affirmed on
20 appeal of the FDO. No party is contesting either the actions taken by Clark County to comply
21 with the FDO or the portions of the FDO with which the County has now complied.
22
23
24

25 **Question 3:** The trial court's order issued on June 12, 2009, regarding parcel CA-1
26 appears to rest on a misrepresentation of the legal description of property allegedly annexed by
27 Camas in Ordinance 2512. *See, AR 3266-70, 3277-78, 3335.* Does this court have the authority
28
29

1 to determine whether any party made a misrepresentation to the Superior Court? If a
2 misrepresentation exists, how does it affect the validity of the trial court's order?
3

4 ANSWER: No party has suggested that any misrepresentation was made to the Superior
5 Court concerning property annexed in Area CA-1 and, in fact, no such misrepresentation was
6 made. The Court of Appeals should not consider this matter on appeal because it has not been
7 raised. Even if the Superior Court did misunderstand the facts regarding Area CA-1, only lands
8 that had been annexed before issuance of the FDO are beyond the County's and appellate
9 jurisdiction. The parties understand the Superior Court's decision to have affirmed the GMHB
10 with regard to those areas that had not been annexed and as to which the Court did not
11 specifically reverse the GMHB. Any harm that might have resulted from the Superior Court's
12 misunderstanding has been cured by the County's removal of the unannexed portion of Area CA-
13 1 from the UGA in compliance with the FDO.
14
15

16 **Question 4:** The respondents assign errors under the APA to RCW 34.05.570 (d) and
17 (e). None of the respondents assign error to any of the GMHB's specific findings (#1 – 47) in its
18 final order. CP 334-39. Are they verities in this appeal? *Manke Lumber Co. v. Cent. Puget*
19 *Sound Growth Mgmt. Hearings Bd.*, 113 Wn.App. 615, 628, 53 P.3d 1011 (2002) (an agency's
20 unchallenged findings of fact are treated as verities on appeal).
21

22 ANSWER: The parties agree that unchallenged findings of fact are verities on appeal.
23 The parties further agree that review of the application of law to the facts is de novo. Beyond
24 these points of agreement, the parties may wish to present their own answers to the Court's
25 question in supplemental briefing.
26

27 **Question 5:** Although the issues raised on appeal generally address the GMHB's method
28 of analysis, Karpinski, et. al's, briefing does not directly address parcels BB, LA, LC, RB-1, RC,
29

1 VC, VE and WA. Is the propriety of the County's dedesignation of these parcels and the
2 GMHB's approval of those dedesignations intended to be included in the Notice of Appeal?
3

4 ANSWER: Karpinski, *et al.*, did not challenge the GMHB decision affirming the
5 County's actions with regard to these properties before the Superior Court, and have not
6 challenged the GMHB decision in this regard before the Court of Appeals.
7

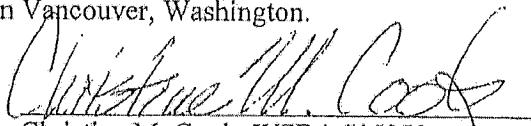
8 **Question 6:** The parties reference land parcel "VA-2" in their briefs. Although parcel
9 "VA-2" is referenced in the County's matrix as part of "Issue Paper #7" and in the GMHB's
10 final order, no "VA-2 parcel designation appears on any maps in the record that are provided to
11 this court. Is "VA-2" intended to refer to the parcel labeled "VA-1" on AR 2253 (the Vancouver
12 West UGA map)?
13

14 ANSWER: Yes, VA-2 is intended to refer to the parcel labeled VA-1 on AR 2253.

15 **Question 7:** In light of these questions, are the record and briefing adequate to allow this
16 court to address all the relevant issues at this time?
17

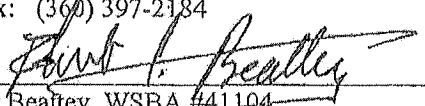
18 ANSWER: For any matters on which we cannot agree to a joint response, the parties
19 propose to file supplemental briefs of no more than 10 pages, not counting appendices, by June
20 11, 2010, with responses of no more than 10 pages due by June 21, 2010. Given that the parties
21 are in agreement concerning the majority of the Court's inquiries, however, the parties also agree
22 that the record and briefing before the Court are adequate to allow the Court to address the
23 relevant issues that are raised by this appeal.
24

25 DATED this 11th day of June, 2010 in Vancouver, Washington.

26 
27 Christine M. Cook, WSBA #15250
28 Deputy Prosecuting Attorney
29 Of Attorneys for Appellant Clark County

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2
3
4
5 Agreed to on this 10th day of June, 2010

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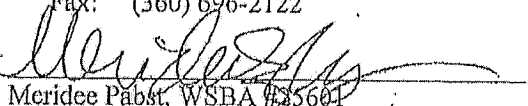
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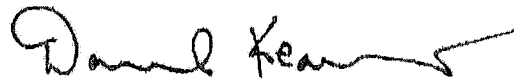
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Subject: No. 85989-2 - Clark County Washington, et al., Petitioners v. Western Washington Growth Management Hearings Review Board, et al., Respondents

This Firm represents Petitioner Sterling Savings Bank in the referenced matter.

R. Omar Riojas, WSBA No. 35400
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Attached in .pdf form for filing at this time is PETITIONER STERLING SAVINGS BANK'S SUPPLEMENTAL BRIEF, and the accompanying Appendix A. Thank you.



Karen Hansen
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